

September 3, 2013

West Des Moines City Council Proceedings
Tuesday, September 3, 2013

Mayor Steven K. Gaer opened the regularly scheduled meeting of the City Council of West Des Moines, Iowa, in the Council Chambers of the West Des Moines City Hall on Tuesday, September 3, 2013 at 5:30 PM. Council members present were: J. Mickelson, T. Ohmart, J. Sandager, K. Trevillyan, and R. Trimble.

On Item 1. Agenda. It was moved by Trimble, second by Ohmart to approve the agenda as presented.

Vote 13-335: Mickelson, Ohmart, Sandager, Trevillyan, Trimble...5 yes
Motion carried.

On Item 2. Public Forum:

Shawn Mori, 6 Sugar Creek Lane, Waukee, requested the August 19th meeting minutes be amended to clarify her Public Forum comments, specifically her request that the City follows a requested 30-day timeline for responding to questions regarding the return of Linda Robel's excess right-of-way and her request that the City renegotiate the prior settlement agreement with Ms. Robel. She also stated it has come to her attention that some of the City Council members believed the recent condemnation of Ms. Robel's property was for the interchange project, rather than the overpass bridge. She requested the Council members read the legal opinion that was presented to them at the August 19th meeting, if they have not done so already. She also requested an update on the City's discussions with the IDOT.

Mayor Gaer responded the City requested a meeting with the IDOT, which was held earlier today, and he noted the IDOT had requested that Ms. Robel and her representatives not be in attendance at that meeting. He stated the IDOT indicated they will send out a response tomorrow to all parties involved, giving direction on the process for addressing the excess right-of-way.

Bryan Cooper, 1816 Center Street, requested clarification on the proposed ordinance related to the definition of vicious animals and expressed concerns that the law might make it easier for an animal to be declared vicious.

City Attorney Dick Scieszinski responded there is an appeal process for animals that are declared vicious that begins with a hearing in front of an internal hearing officer and can then go to the City Council and on to the courts. If an animal is found to be not vicious at any point in that appeal process, there will be no impact on the animal going forward.

Mayor Gaer explained the intent of the proposed ordinance was to address issues with the current definition, not to make it easier for an animal to be declared vicious.

On Item 3. Council/Manager/Other Entities Reports:

City Manager Greg Sparks reported he attended a meeting on the MPO Tomorrow Plan with representatives from other metro communities on August 21st, where discussion was held about concerns related to the plan. He also reported a public meeting on the proposed readdressing was held on August 29th with about 30 people in attendance. Staff will now review the input from that meeting and bring a recommendation to the Public Safety Subcommittee before coming back to the full Council in several weeks. He also reported a public meeting will be held on the 105th Street/Alice's Road Interchange project on September 5th at Waukee City Hall. He stated Chris Shires, Development Planning and Inspection Manager, is leaving and his last day will be September 13th, and Aaron Chittenden, Assistant to the City Manager, has been appointed as the Interim Development Planning and Inspection Manager.

Council member Ohmart reported he met with the IDOT District Engineer and members of the Warren County Supervisors on August 29th to discuss possible plans for the replacement of the Adams Street bridge over I-35.

Council member Trimble reported the Finance and Administration Subcommittee met and discussed a developer request for a similar arrangement as the City agreed upon for Oppidan's Woodland Hills project. This developer's request was not supported by Subcommittee members because the City is not interested in such development agreements going forward and the Woodland Hills agreement was only justified because that specific situation had a number of unique challenges. He reported the subcommittee also discussed a possible 28E Agreement with WDM Water Works to exchange city-owned land south of Highway 5 for land near Raccoon River Park to be used for a future animal control facility.

Council member Trevillyan reported a Ward 1 Quarterly Town Hall Meeting will be held on September 14th from 10:30 a.m. to Noon at the WDM Community Center.

Mayor Gaer congratulated Tim Stiles, Finance Director, and his department, because their FYE June 30, 2012 Annual Finance Report has been awarded a Certificate of Achievement for Excellence in Government Financial Reporting by the Government Finance Officers Association.

On Item 4. Consent Agenda.

Council members pulled Item 4(a) for discussion. It was moved by Trimble, second by Sandager to approve the consent agenda as amended.

- b. Approval of Bill Lists
- c. Approval of Liquor Licenses:
 - 1. Apple Corps, L.P., d/b/a Applebee's Neighborhood Grill & Bar, 6190 Mills Civic Parkway - Class LC Liquor License with Sunday Sales - Renewal

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2. KRC Partners, LLP, d/b/a Cooper's on 5th, 227 5th Street - Class LC Liquor License with Sunday Sales - Renewal
 3. Embassy Club West, LLC, d/b/a Embassy West - Class LC Liquor License with Carryout Wine, Sunday Sales, Outdoor Service, and Catering Privileges - Renewal
 4. G.O.C.C. Investments, LLC, d/b/a Glen Oaks Country Club, 1401 Glen Oaks Drive - Class LC Liquor License with Carryout Wine, Sunday Sales, Outdoor Service, and Catering Privileges - Renewal
 5. Sakura Sushi, Inc., d/b/a Sakura Sushi, 1960 Grand Avenue, Suite 11 - Class LC Liquor License with Sunday Sales - Renewal
 6. CY Heritage Inn of West Des Moines, LLC, d/b/a West Des Moines Courtyard Inn, 410 South 68th Street - Class LB Liquor License with Sunday Sales - Renewal
- d. Approval of Temporary Parking and Signage - Valleyfest, October 12, 2013
- e. Approval of Grant Applications:
1. Iowa Clean Air Attainment Program (ICAAP) Funds - Traffic Adaptive Signal Controls on University Avenue
 2. Prairie Meadows Community Betterment Grant - WDM Human Services Emergency Assistance Program
- f. Establish Public Hearing - Issuance of Not to Exceed \$6,000,000 Industrial Revenue Bonds - Woodgrain Millworks, Inc. d/b/a Windsor Windows
- g. Proclamation - National Payroll Week - September 2-6, 2013
- h. Approval of Extension of Entitlement - Village of Ponderosa Plat 6

Vote 13-336: Mickelson, Ohmart, Sandager, Trevillyan, Trimble...5 yes
Motion carried.

On Item 4(a) Approval of Minutes of August 19, 2013 Meeting

It was moved by Trimble, second by Sandager to approve Item 4(a) Approval of Minutes of August 19, 2013 Meeting with the corrections requested by Ms. Mori.

Vote 13-337: Mickelson, Ohmart, Sandager, Trevillyan, Trimble...5 yes
Motion carried.

On Item 5(a) Tallyn's Reach Planned Unit Development, generally in 9300 block between Cascade Avenue and Stagecoach Drive - Amend the Tallyn's Reach Planned Unit Development Regulations for Outlot J from Medium Density Residential (MDR) (PUD Parcel F) to Single Family Residential (SFR) (PUD Parcel J) Standards to Allow Residential lots, initiated by KTJ 201, LLC

It was moved by Trevillyan, second by Trimble to consider the second reading of the ordinance.

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Vote 13-338: Mickelson, Ohmart, Sandager, Trevillyan, Trimble...5 yes
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Trevillyan, second by Trimble to approve the second reading of the ordinance.

Vote 13-339: Mickelson, Ohmart, Sandager, Trevillyan, Trimble...5 yes
Motion carried.

It was moved by Trevillyan, second by Trimble to waive the third reading and adopt the ordinance in final form.

Vote 13-340: Mickelson, Ohmart, Sandager, Trevillyan, Trimble...5 yes
Motion carried.

On Item 5(b) Amendment to City Code - Title 5 (Police Regulations), Chapter 3 (Animal Control), Section 2 (Definitions) and Section 8 (Seizure, Impoundment, and Disposition of Vicious Animals) - Revised Vicious Animal Definition and Restrictions, initiated by the City of West Des Moines

It was moved by Trevillyan, second by Mickelson to consider the second reading of the ordinance.

Vote 13-341: Mickelson, Ohmart, Sandager, Trevillyan, Trimble...5 yes
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Trevillyan, second by Mickelson to approve the second reading of the ordinance.

Vote 13-342: Mickelson, Ohmart, Sandager, Trevillyan, Trimble...5 yes
Motion carried.

It was moved by Trevillyan, second by Mickelson to waive the third reading and adopt the ordinance in final form.

Vote 13-343: Mickelson, Ohmart, Sandager, Trevillyan, Trimble...5 yes
Motion carried.

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On Item 5(c) Amendment to City Code - Title 5 (Police Regulations), Chapter 3 (Animal Control), Article A (Dogs and Cats), Section 2 (Applications) - Liability Insurance Required for Vicious Animals, initiated by the City of West Des Moines

It was moved by Trevillyan, second by Mickelson to consider the second reading of the ordinance.

Vote 13-344: Mickelson, Ohmart, Sandager, Trevillyan, Trimble...5 yes
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Trevillyan, second by Mickelson to approve the second reading of the ordinance.

Vote 13-345: Mickelson, Ohmart, Sandager, Trevillyan, Trimble...5 yes
Motion carried.

It was moved by Trevillyan, second by Mickelson to waive the third reading and adopt the ordinance in final form.

Vote 13-346: Mickelson, Ohmart, Sandager, Trevillyan, Trimble...5 yes
Motion carried.

On Item 6(a) Mayor Gaer indicated this was the time and place for a public hearing to consider Public Safety Station 19, 8055 Mills Civic Parkway - Amend the Current Specific Plan to Increase the Approved Communications Tower Height from 75 Feet to 180 Feet Tall and Approve Construction of a Tower in Two Phases and Add Related Ground Equipment, initiated by the City of West Des Moines (continued from August 5, 2013 meeting). He asked for the date the notice was published and the City Clerk indicated the notice was originally published on July 19, 2013 in the Des Moines Register. Mayor Gaer asked if any written comments had been received. The City Clerk stated, in addition to the communications included in the packet, on a vote of 6-0, with one member abstaining, the Plan and Zoning Commission recommended City Council deny the requested amendment to the current specific plan.

Mayor Gaer asked if there were any public comments.

Mary Pearce, 454 South 82nd Street, spoke in opposition to the proposed amendment to allow a 180 foot tall communications tower, citing concerns about potential health hazards for residents living in close proximity to such a tower. She stated, whether or not it poses an actual health hazard, if it is perceived by some to be hazardous, it could negatively impact property values of the homes in that area. She also expressed her belief that a 180 foot tower doesn't fit in amidst a residential development.

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Robert Renken, Manager of Real Estate for iWireless, 4135 NW Urbandale Drive, Urbandale, explained that it is much easier to put up cell towers in areas before homes are built, but if homes are already built, then there is a question of how to provide service to that area. He stated the preferred method for providing cell phone service is to use existing infrastructure, such as the soon-to-be-constructed communications tower at Public Safety Station 19. He explained there is a need for expanded service in this part of the city, and Public Safety Station 19 would be a preferred location. He noted that, since the site plan already reflects a 75 foot tower, the request is merely to extend what is already permitted, and it would make more sense to put up the 180 foot tower as the initial construction rather than come back in the future to extend what has already been built. He stated if the cell phone tower is not co-located on the communications tower at Public Safety Station 19, then another location for the cell phone tower will be needed in that area.

Greg Pearce 454 South 82nd Street, spoke in opposition to the proposed amendment to allow a 180 foot tall communications tower. He stated after looking at other communities, he didn't find any instances of a 180 foot tower being located near a residential development, because they were all located just outside the city. He expressed his belief that it makes more sense from a planning perspective to put such a tower in a more rural or industrial area.

Mike Matheny, 404 South 82nd Street, spoke in opposition to the proposed amendment to allow a 180 foot tall communications tower. He noted City staff had stated, at the August 29th Plan and Zoning Commission meeting, that the original intent for the communications tower was to address issues with dropped 911 calls but those issues have since been resolved, so he questioned the need for such a tower. He stated he believes there are other possible locations in the area suitable for a communications tower.

Donna Wildes, 263 South 82nd Street, spoke in opposition to the proposed amendment to allow a 180 foot tall communications tower, citing concerns that will become an eyesore for residents in that area. She noted City staff stated, again at the August 29th Plan and Zoning Commission meeting, that public safety needs would only warrant a 75 foot tower, so anything above that would not provide any additional public safety benefit to the community. She also cited concerns that a 180 foot tower could negatively impact property values of the homes in that area.

Mayor Gaer asked if there were any additional public comments; hearing none he declared the public hearing closed.

It was moved by Sandager, second by Mickelson to adopt Resolution - Approval of Plan and Zoning Commission Recommendation.

Council member Mickelson expressed appreciation that City staff are seeking alternate sources of revenue, such as a possibly co-location of cell service on the communication tower at Public Safety Station 19, and he encouraged them to continue doing so. He stated he agrees that the need for more cell coverage is an issue that needs to be solved, however he is opposed to putting

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up a 180 foot tower at Public Safety Station 19 because a tower of that height wasn't approved when the station was built and the homeowners in that area bought their property without any notice that the 75 foot tower, which was reflected on the then approved site plan, could be extended in the future.

Council member Ohmart expressed concerns about a potential double standard being set because the City requires others who put up a tower to make it tall enough for cell service. He stated he hopes that any plans for future city facilities will include initial plans for a 180 foot tower.

Council member Trimble stated he is against this proposal, but he agrees the City needs to be proactive in finding acceptable places where future cell towers can be located and he asked staff to work with the wireless companies to come up with a plan to address that.

Vote 13-347: Mickelson, Ohmart, Sandager, Trevillyan, Trimble...5 yes
Motion carried.

On Item 6(b) Mayor Gaer indicated this was the time and place for a public hearing to consider Fox Valley, south and west of South Orilla Road and Adams Street - Rezone 2 acres of Property from Medium Density Residential (RM-8) to Single Family Residential (RS-10), initiated by Charles I. & Ruth Colby National Development Trust. He asked for the date the notice was published and the City Clerk indicated the notice was published on August 16, 2013 in the Des Moines Register. Mayor Gaer asked if any written comments had been received. The City Clerk stated on a vote of 7-0 the Plan and Zoning Commission recommended City Council approval of the proposed rezoning.

Mayor Gaer asked if there were any public comments; hearing none he declared the public hearing closed.

It was moved by Trimble, second by Sandager to consider the first reading of the ordinance.

Vote 13-348: Mickelson, Ohmart, Sandager, Trevillyan, Trimble...5 yes
Motion carried.

The City Clerk read the preamble to the ordinance.

It was moved by Trimble, second by Sandager to approve the first reading of the ordinance.

Vote 13-349: Mickelson, Ohmart, Sandager, Trevillyan, Trimble...5 yes
Motion carried.

On Item 6(c) Mayor Gaer indicated this was the time and place for a public hearing to consider 2012 Sidewalk Improvement Program, initiated by the City of West Des Moines. He asked for the date the notice was published and the City Clerk indicated the notice was published on

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August 23, 2013 in the Des Moines Register. Mayor Gaer asked if any written comments had been received. The City Clerk stated none had been received.

Mayor Gaer asked if there were any public comments; hearing none he declared the public hearing closed.

It was moved by Sandager, second by Trevillyan to adopt Resolution - Approval of Plans and Specifications, Motion to Receive and File Report of Bids, and Resolution - Award Contract to The Concrete Company.

Vote 13-350: Mickelson, Ohmart, Sandager, Trevillyan, Trimble...5 yes
Motion carried.

On Item 7(a) South Maple Grove Plat 12, southeast corner of Westown Parkway and 90th Street - Subdivide Parcel into 19 Lots for Residential Development and 3 Public Streets Lots, initiated by MidAmerica Real Estate Company

It was moved by Trevillyan, second by Trimble to adopt Resolution - Approval and Release of Final Plat, subject to the applicant complying with all applicable City Code requirements and the following conditions of approval:

1. Providing final plat drawings, prior to recording of the plat.

Vote 13-351: Mickelson, Ohmart, Sandager, Trevillyan, Trimble...5 yes
Motion carried.

On Item 7(b) Enclave of Ashworth, Plat 2, southeast corner of Ashworth Road and 67th Street - Subdivide Property into 22 Lots for Residential Development, 3 Public Street Lots, and 1 Outlot for Detention, initiated by Mid-America Investment Company

It was moved by Sandager, second by Trevillyan to adopt Resolution - Approval and Release of Final Plat, subject to the applicant complying with all applicable City Code requirements and the following conditions of approval:

1. Adding a note on the final plat indicating the purpose of Outlot Z and indicating that the homeowners association will own and maintain this Outlot in perpetuity; and,
2. Providing final copies of the final plat prior to recordation.

Vote 13-352: Mickelson, Ohmart, Sandager, Trevillyan, Trimble...5 yes
Motion carried.

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On Item 7(c) Woodland Hills of West Des Moines Plat 1, south of Cascade Avenue and north of the intersection of Stagecoach Drive and South 93rd Street - Subdivide Property into 56 Lots for Residential Development, 1 Outlot for Storm Water Detention, and 3 Public Street Lots, initiated by KTJ 201, LLC

It was moved by Trevillyan, second by Sandager to adopt Resolution - Approval of Preliminary Plat, subject to the applicant complying with all applicable City Code requirements and the following conditions of approval:

1. The Applicant providing for review for conformance with City design standards an updated Preliminary Plat that incorporates the plan review comments as noted in Exhibit B prior to approval of any public improvement plans and the Final Plat.
2. Approval of the Preliminary Plat is subject to the approval and final adoption of the PUD Amendment for Tallyn's Reach – Outlot J.
3. Prior to Final Plat proceeding to City Council for approval, applicant will need to complete the following public improvements, or petition to the City Council to provide surety in lieu of completion and acceptance of the following public improvements:
 - a. Public street paving
 - b. Public storm and sanitary sewer
 - c. Public sidewalks
 - d. Buffer and Streetscape plantings

Vote 13-353: Mickelson, Ohmart, Sandager, Trevillyan, Trimble...5 yes
Motion carried.

On Item 8 - Receive, File and/or Refer: no items

On Item 9 - Other Matters

Mayor Gaer requested a status update on the City's request for an Attorney General opinion regarding a possible stormwater ordinance.

City Attorney Scieszinski responded the Attorney General's office had contacted the City about a month ago with a couple questions about the request and their questions were answered at that time. He stated he will call tomorrow for a status update.

The meeting was adjourned at 6:25 p.m.

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Respectfully submitted,

Ryan T. Jacobson
Deputy City Clerk

ATTEST:

Steven K. Gaer, Mayor